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In the Matter of

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WT Docket No. 97-82

Amendment of the Commission's Rules
Regarding Installment Payment
Financing for Personal Communications
Services (PCS) Licensees

MAY 11 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS AND PETITION FOR RECONSIDERATION ON THE COMMISSION'S ORDER ON
RECONSIDERATION OF THE SECOND REPORT AND ORDER

I, Vincent D. McBride, pursuant to Section 1.429 (f) of the Commission's rules, 47 C.F.R. 1.429(f) (1996) and Public Notice, DA 98-741 released April 17, 1998, hereby submit my comments and petition for reconsideration with respect to the above-captioned proceedings adopted March 23, 1998 and Released March 24, 1998.

Vincent D. McBride files these comments to urge the commission to reconsider the above order, based on the April 24, 1998 ruling of Federal Bankruptcy Court Judge Steven A. Felsenthal. Who has determined that "reasonably equivalent value" was not exchanged when the FCC granted 14 Entrepreneur's C-Block PCS licenses to General Wireless, Inc. The \$1Billion in bids made by GWI with an average price of \$56.05 per pop was revalued by the court, down to \$166 million. This is an 85% discount to GWI's net bid, a value on par with the D, E, & F Block auctions which each sold for 400% less than the Entrepreneur's C Block auction. This discount is similar to the amount that the Commission is willing to give to bankrupt Pocket Communications creditors, which has a total bid of \$1.5 Billion on 43 licenses. I contend that this ruling is selective, arbitrary, and unilateral and favors only the largest players in the Entrepreneur's C Block Auction and again discriminates against the smallest players whose needs have been constantly ignored by the Commission.

The outcome of this ruling is most likely going to effect NextWave Personal Telecommunications Inc. who bid a total of \$4.2 Billion for 56 licenses. The bankruptcy option may well be the preferred direction, which NextWave may now consider as an obligation to its shareholders.

The Commission has been consistently unwilling to support the truly small bidders in the Entrepreneur's C Block auction. I'm talking about the small companies and individuals who each hold only one license and 13 small companies who hold two licenses each.

Though this group represents over HALF of the total number of winning bidders, they only account for less than 1.75% of the total net bids. (Please see enclosure list of 43 C Block Companies)

It is now clear that the Entrepreneur's C Block auction total net bids of \$10 Billion was over-inflated by as much as 400% and was done so primarily by the bidding procedures of only four companies. These four companies alone account for over 70% of the total net bids:

BDPCS, who bid \$873 Million. BDPS never even had the first 5% down payment and blames loss of its licenses on US West Inc.

POCKET COMMUNICATIONS, whose creditors are Ericsson and Siemens, has filed for bankruptcy. They are asking for a 50% discount on the Dallas & Chicago markets

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with NO penalties.

GWl PCS Inc. with backing from Hyundai filed for bankruptcy, and Federal Judge Steven A. Felsenthal has discounted its net bid by 85% with no penalty on its down payment.

NEXTWAVE TELECOM INC. The FCC who, despite the official conclusion NextWave was in violation of the foreign ownership rules by as much as 100%, it granted 56 licenses to NextWave with total disregard to the legitimate small bidders participating in the Entrepreneur's C Block auction. For the FCC to now claim that it cannot modify the so-called "integrity of the rules" is preposterous because the FCC has changed the rules constantly to accommodate the large players.

The Commission's order on reconsideration of the Entrepreneur's C Block states it was essential to ensure fair and impartial treatment for all auction participants. This includes unsuccessful bidders like U.S. Air Waves Inc. who posted up front deposits alone of \$81 Million in the Entrepreneur's C Block auction this deposit was EQUAL to the total net bids of the 30 smallest players. The C Block auction was actually partial, prejudicial and discriminatory from the very start in more ways than one. \$500 Million is not what I call a small business by any expression. The SBA whose business is determining the boundaries of a small business, and has been doing so for the last 40 years has concluded a small business was a business with \$5 Million in assets or less. Yet the FCC had set the qualification of a small business at 100 times that amount. Their rule making regarding this matter was based on the intensive amount needed in the Telecom business. Well that could be subjective, just ask thousands of small businesses all over the world, and you will find businesses that started with \$1000 or less, some of which are now American icons.

Allowing NextWave Telecom Inc. into the auction bidding with the backing of South Korean companies, some of which are 50% owned by the South Korean Government. This is the same South Korean Government that the IMF (backed and supported by the US Government) just bailed out to the tune of \$100 Billion. The FCC had full knowledge of the NextWave violation of the foreign ownership rules. Antigone Communications L.P., Devco Inc, National Telecom Inc, publicly reported this to the Commission. Also by a letter dated March 12, 1996 from the President of GO Communications, Steve Zecola, to then Chairman Reed Hundt which urged the Commission to investigate "illegitimate bidders" who were causing the rapid rise in marketplace values. In spite of these protestations, the Commission made the choice to disregard these warnings. And now would like to preserve the "integrity" of the auction by imposing a 100% penalty on the down payments of the 43 small Entrepreneur's C Block winners who are being coerced into accepting the Amnesty option. The courts of bankruptcy may now offer the only true means of recovering our funds being confiscated by the FCC. In addition, National Telecom Inc. has a \$1 Billion lawsuit against Pocket Communications Inc. for antitrust violations, collusion and fraud

In light of the Federal Bankruptcy Court ruling on the GWl licenses it would be very unfair for the Commission to ask the 43 truly small auction winners to help pay for the \$700 Million plus discount to GWl. The option the commission is willing to give us includes a ZERO reduction to our net bids and a 100% penalty on our down payments. Even if all 43 small bidders are to forfeit 100% of our down payments the total would only come to \$17.5 million and a re-auction of the 43 licenses would take up to a year. The prices at re-auction could be as low as 10 cents on the \$1.00 or as little as \$1.00 a license if the WCS or LMDS auctions are to repeat, and then the five year build out clock would start all over again. This would prevent any real competition in the small markets all across America for which the 43 smallest players have won. Towns like Williston ND. population 13,000 - would not see new digital service until year 2005, if ever. It is no big secret in the wireless industry that the big A and B block players will not build out the small markets for some years down the road simply because of the build-out

cost and the length of time to see any real return on their investment. The longer they wait, the less it will cost to build out the small markets.

I believe this would be against the Commission's main goals of promoting competition and encouraging Designated Entities to participate in the wireless telecommunications industry. This is a bold slap in the face to all participating small players in the Entrepreneur's C Block auction, as well as a breach of the Commission's objective and its statutory mandate from Congress under Section 309(j) of the Telecommunications Act. The Commission has an absolute responsibility to ensure the integrity of the Telecommunications Act, and to make good on the fundamental principles of the Entrepreneur's C Block Auction, and to fulfill what the Congress envisioned in 1993. It would be a great blunder for the commission to now look the other way.

The "Options" which the Commission is offering to the small bidders are useless. Because we have only one market, any combination of desegregation and prepayment is not a choice, nor is any other cocktail solution the Commission has come up with. The "Options" are unfair and biased treatment to the small Entrepreneur's C Block bidders. Additionally, no matter what extension of time the Commission is providing - 30 days, 60 days, or 30 years - we are holding licenses that are over-valued by as much as 85% and in some cases have no value at all! For the commission to suggest that by offering a 30-day extension of time will assist license holders to complete their fund-raising efforts is ludicrous. To make matters worse, you just added a 5% late payment fee to boot.

Apparently the opposition to additional payment choices was proposed by AT&T - hardly a neutral observer! I do not question the right of AT&T to file an opposition, but I do question the impact it may have had on the Commission. As for the fairness to other applicants who might have bid differently under more relaxed payment terms, there is a case to be made that the small bidders in the Entrepreneur's C Block auction may have bid considerably differently. If we had known that the top four bidders were going renege on their obligations, that the FCC was not going to uphold the foreign ownership rules and that the Commission planned to suspend all installment payments for one year. I could have bid \$1 Billion for the New York market. Apparently the larger the obligation, the less it means to the FCC as you merrily change the rules as you go along.

The Commission further explained that licensees selecting "Amnesty" would benefit substantially by avoiding being declared in default and thereby being freed from assessments of delinquencies. One has to ask if the licensees could seek the same from a bankruptcy court. What kind of "option" is the Commission offering us when it is significantly worse than what satisfaction could be had in the court? If this Entrepreneur's C Block Auction ends up in court which may well be the case - the small bidders may ask the court for a lot more than its down payment back.

Your so-called "concern" for the taxpayer is a two-faced misnomer and another politically driven deceit. How can the same FCC who was granted a mandate by Congress in 1993 to auction the "American air waves" to the small businesses of America rationalize given away \$50 Billion in HDTV licenses to companies like General Electric, Westinghouse, and Walt Disney who own NBC, CBS, and ABC? Where was your concern for the "tax payer" in that decision? At best your decisions seem arbitrary, at worse they seem to favor those in position of power and money - the really big players. Again, the little guy - in spite of congressional mandate - is the real loser.

FOR CONSIDERATION:

The June 8, 1998 Election Date to decide on the present options, must be delayed until after the decisions of the courts regarding the status of the bankruptcy of GWI and Pocket Communications.

100% return of all down payments, plus back interest at 7% to date, to any one choosing the Amnesty Option.

Delay payments on all Entrepreneur's C Block licenses until all pending matters are settled.

Respectfully submitted,

Vincent D. McBride
2655 30th Street Suite 203
Santa Monica Ca 90405

May 5, 1998

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